

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 901 Florida Building Commission
SPONSOR(S): McClain
TIED BILLS: **IDEN./SIM. BILLS:** SB 7000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Brackett	Anstead
2) Commerce Committee			

SUMMARY ANALYSIS

The Florida Building Commission (commission) located under the Department of Business and Professional Regulation (DBPR) implements and adopts the Florida Building Code (Code). The Code is the state wide building code for all construction in the state. The commission updates the Code every three years using the National Electric Code (NEC) and International Code Council's I-codes as a foundation for the updated Code. The commission may make amendments to the adopted Code. However, those amendments expire when the newest edition of the Code takes effect. The commission is granted rule-making authority to determine voting requirements for adoption of the Code and amendments to the Code.

The bill:

- Discontinues the use of the I-codes and NEC as the foundation codes for use as the updated Code and instead requires the use of the 6th edition of the Code and any subsequent edition of the Code to be used as the foundation.
- Removes the requirement that the commission update the Code every three years and instead requires the commission to review the Code every three years to determine if it needs to be updated.
- Provides for the commission to adopt any section of the I-codes or the NEC as amendments.
- Provides that amendments to the Code made by the commission do not automatically expire when the newest edition of the Code takes effect.
- Provides that the commission must adopt the Code and amendments by at least a three-fourths vote of the members present at the meeting.

The bill is not expected to have a fiscal impact on state government. The bill has an unknown fiscal impact on local government.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Building Code

In 1974, Florida adopted a state minimum building code law requiring all local governments to adopt and enforce a building code that would ensure minimum standards for the public's health and safety. Four separate model codes were available that local governments could consider and adopt. In that system, the state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹

In 1992, Hurricane Andrew demonstrated this system of local codes did not provide the level of public protection that was necessary when the local code that was universally acknowledged to set the strongest standard for hurricane protection essentially failed. After the state filled the property insurer void left by failed and fleeing private insurance companies, and the federal government poured billions of dollars of aid into the disaster area, it became starkly apparent the state had a significant interest in the effectiveness of building codes.²

In 1996, a study commission was appointed to review the system of local codes created by the 1974 law and to make recommendations for modernizing the entire system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and an enhanced oversight role for the state in local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Code), and that first edition replaced all local codes on March 1, 2002.

In 2004, for the second edition of the Code, the state adopted the International Code Council's I-Codes. The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." The ICC publishes I-Codes: a complete set of model comprehensive, coordinated building safety and fire prevention codes, for all aspects of construction, that have been developed by ICC members. All 50 states have adopted the I-Codes.³

All subsequent Florida Building Codes have been adopted utilizing the I-Codes as the base code. The most recent Code is the 5th edition, which is referred to as the 2014 Florida Building Code. The 5th edition of the Code went into effect June 30, 2015.⁴

The Florida Building Commission

The commission was statutorily created to implement the Florida Building Code. The commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 27-member technical body responsible for the development, maintenance, and interpretation of the Florida Building Code. The commission also approves products for statewide acceptance. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the Code.⁵

¹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, available at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Mar. 23, 2017).

² *Id.*

³ International Code Council, *About the ICC*, <http://www.iccsafe.org/about-icc/overview/about-international-code-council/> (last visited on Mar. 23, 2017).

⁴ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Mar. 23, 2017).

⁵ s. 553.74, F.S.

The commission is granted rule making authority for its consensus-based decision making process including adopting rules for super majority voting requirements for acts related to adopting the Code or amendments to the Code. Currently the commission's adopted rule requires a supermajority vote of 75% for all matters except procedural motions.⁶

The commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.⁷ TACs are made up of commission members and other parties who advise the commission on declaratory statements, proposed amendments, and any other areas of interest of the commission.⁸

The commission is currently in the process of adopting the 6th Edition of the Florida Building Code. The 6th Edition of the Florida Building Code is tentatively expected to go into effect on December 31, 2017.⁹

Updating the Florida Building Code

The commission must update the Code every three years. When updating the Florida Building Code, the commission is required to use the most current version of:

- The National Electric Code (NEC); and
- The following I-codes of the ICC:
 - International Building Code;
 - International Fuel Gas Code;
 - International Mechanical Code;
 - International Plumbing Code;
 - International Residential Code; and
 - International Electrical Code.

These I-Codes and the NEC form the foundation codes of the updated Florida Building Code. The commission may modify the foundation codes only as needed to accommodate the specific needs of the state.¹⁰

Amendments to the Code

The commission and local jurisdictions may make technical and administrative amendments to the Code. A technical amendment to the Code is an alteration to the prescriptive requirements or reference standards for construction. An administrative amendment is an addition or alteration of the code enforcement requirements of the Code.¹¹

Local jurisdictions may make amendments to the code that are more stringent than the Code and are limited to the local jurisdiction. Amendments by local jurisdictions expire upon the adoption of the newest edition of the Code.

The commission may adopt amendments once a year. Amendments by the commission also expire with the adoption of the newest edition of the Code unless the amendment is:

- Related to state agency regulations;
- Related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward County.¹²

⁶ Rule 61G20-2.001 F.A.C.

⁷ DBPR, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited on Mar. 24, 2017).

⁸ DBPR, *Florida Building Code Standards*, http://www.myfloridalicense.com/dbpr/bcs/program_committees.html (last visited on Mar. 23, 2017), & Rule 61G20-2.001 F.A.C.

⁹ 6th Edition (2017) FBC Code Update Development Tasks, *available at* http://www.floridabuilding.org/fbc/thecode/2017_Code_Development/Timelines/FBC_WorkplanOption1-2015.pdf (Last visited Mar. 23, 2017).

¹⁰ s. 553.73(7), F.S.

¹¹ s. 553.73, F.S. & Rule 61G20-2.002 F.A.C.

¹² s. 553.73, F.S.

The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

- Is needed in order to accommodate the specific needs of this state.
- Has a reasonable and substantial connection with the health, safety, and welfare of the general public.
- Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.
- Does not degrade the effectiveness of the Florida Building Code.¹³

In order to adopt a technical amendment to the Code the commission must meet the following requirements provided in s. 553.73(3)(a-d), F.S.:

- The proposed amendment has been published on the commission's website for a minimum of 45 days and all the associated documentation has been made available to any interested party before any consideration by a TAC;
- In order for a TAC to make a favorable recommendation to the commission, the proposal must receive a three-fourths vote of the members present at the TAC meeting and at least half of the regular members must be present in order to conduct a meeting;
- After TAC consideration and a recommendation for approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before any consideration by the commission; and
- A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with ch. 120.

Adopted amendments to the foundation codes must be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are Florida-specific amendments to the foundation codes is readily apparent.¹⁴

However, for certain amendments the commission only has to follow the rule adopting procedures in ch. 120. The commission may adopt amendments using the rule adoption procedure to address the following:

- Conflicts within the updated code;
- Conflicts between the updated code and the Florida Fire Prevention Code;
- Unintended results from the integration of previously adopted Florida-specific amendments with the model code;
- Equivalency of standards;
- Changes to or inconsistencies with federal or state law;
- Adoption of an updated edition of the NEC if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare; or
- Enhance the construction requirements relating to wind resistance or the prevention of water intrusion.¹⁵

Expired Amendments

If an amendment expires because the Code is updated it may be resubmitted through the commission's code adoption process. If an amendment is resubmitted it must specifically address whether:

- The provisions contained in the proposed amendment are addressed in the applicable international code.

¹³ *Id.*

¹⁴ s. 553.73(7), F.S.

¹⁵ s. 553.73(8), F.S.

- The amendment demonstrates by evidence or data that the geographical jurisdiction of Florida exhibits a need to strengthen the foundation code beyond the needs or regional variations addressed by the foundation code, and why the proposed amendment applies to this state.
- The proposed amendment was submitted or attempted to be included in the foundation codes to avoid resubmission to the Florida Building Code amendment process.

If the proposed amendment has been addressed in the I-codes in a substantially equivalent manner, the commission may not include the proposed amendment in the foundation codes.¹⁶

Effect of the Bill

The bill provides that the commission will use the 6th edition or any subsequent editions of the Code as the foundation for the Code, instead of the ICC's I-codes and the NEC.

The bill provides that every three years the commission will review the Code to consider whether it needs to be updated. When evaluating the Code to determine if the Code needs to be revised the commission will review the previous foundation codes made up of:

- The National Electric Code (NEC); and
- The following I-codes of the ICC:
 - International Building Code;
 - International Fuel Gas Code;
 - International Mechanical Code;
 - International Plumbing Code;
 - International Residential Code; and
 - International Electrical Code.

The bill provides that the commission may adopt any section of the reviewed codes as a technical amendment as needed to accommodate the specific needs of the state. In order to adopt a section of the reviewed codes as a technical amendment, the commission must meet the requirements provided in s. 553.73(3)(a-d), F.S. If the commission does adopt a section of the reviewed codes then it must be clearly marked in printed versions of the Code so that it is readily apparent that the section is an amendment.

The bill also removes the requirement that amendments to the Code by the commission expire upon the effective date of the new edition of the Code. Amendments other than local amendments to the Code, will now remain effective when a new edition of the Florida Building Code is published.

The bill provides that the commission may adopt rules related to its decision making process. However, the bill provides that the commission must adopt the Code and amendments by at least a three-fourths vote of the members present at the meeting.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 553.73, F.S., by amending the process for adoption of the Code and amendments to the Code.
- Section 2.** Amends s. 553.76, F.S., by requiring the commission to adopt the Florida Building Code, and amendments thereto, by a three-fourths vote of the members present.
- Section 3.** Provides an effective date of July 1, 2017.

¹⁶ s. 553.73(7), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

Opponents of the bill argue that removing the I-codes as the foundation codes would raise flood insurance premiums by over \$60.5 million. The opponents argue that local jurisdictions are graded on the Building Code Effectiveness Grading Schedule (BCEGS) and National Flood Insurance Program's Community Rating System (CRS). The BCEGS scale measures a jurisdiction's effectiveness of enforcing a building code, and is used to adjust building insurance policies and flood insurance premiums. The CRS is a voluntary grading system to encourage communities to minimize flood losses. The more flood resiliency a community achieves, the higher CRS rating it receives, and generally lowers the flood premiums in the jurisdiction. If a jurisdiction moves away from using the most recent edition of the I-codes their BCEGS and CRS grade will lower. A lower grade generally results in higher policies and premiums.

Opponents also argue that moving away from the I-codes could result in potential reductions in post-disaster funding from the Federal Emergency Management Agency's (FEMA) Public Assistance Program. FEMA's Public Assistance program provides federal grants to state, local, tribe, and certain non-profits following a disaster declared by the President. Opponents argue that FEMA requires local jurisdictions to use the I-codes as a minimum design standard for all grants.

DBPR indicated that not adopting the international model codes/standards, as the foundation code, could lead to a gap between national construction standards and those used in Florida which could impact insurance rates in the State of Florida.¹⁷

It is unknown if replacing the I-codes and NEC with the 6th edition of the Code as the foundation codes will have a negative effect on local governments. The Code may have a negative effect if local jurisdictions are required to consistently make amendments to the Code in order to keep up to date with the I-codes and NEC in order to keep insurance premiums down in their jurisdictions.

¹⁷ Florida Department of Business and Professional Regulation, Agency Analysis of 2017 House Bill 901, p. 5(Jan. 23, 2017).

It is unknown if replacing the I-codes and NEC with the 6th edition of the Code as the foundation codes will have a positive effect on local governments. The Code may have a positive effect by building officials not being required to learn an updated Code every three years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES